UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

SA'DA AND TYJUAN JOHNSON, minors, by their parent and next friend FELICIA JOHNSON, et al.,

Plaintiffs,

v.

BOARD OF EDUCATION OF CHAMPAIGN UNIT SCHOOL DISTRICT #4,

Defendant.

FILED

JAN 2 9 2002

JOHN M. WATERS, Clerk
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

Case No. 00-1349

SECOND REVISED CONSENT DECREE

1. In May and July 1996, the United States Department of Education, Office of Civil Rights ("OCR"), accepted complaints by several families ("OCR complainants") that addressed mandatory one-way busing of African-American students and the educational services provided to those students by Champaign Community Unit School District No.4 ("Unit 4").

2. In September 1996, OCR initiated a proactive compliance review of Unit 4 in the areas of over-representation of minorities in special education and under-representation of minorities in upper level courses.

3. In October 1996, the OCR complainants, by their counsel Futterman & Howard, Chtd., amended their complaints to include additional allegations of system-wide discrimination in student

assignment, within-school segregation practices and tracking, discipline, and staffing.

4. Shortly thereafter, OCR incorporated the allegations of the OCR complainants into the proactive review.

5. Following a period of study and community input, the Board of Education of Unit District No.4 ("Board") in November of 1996 established a redistricting plan ("Redistricting Plan").

6. The OCR complainants asserted that the Redistricting Plan did not fully resolve their complaints, and that the Unit 4 student assignment system required additional modifications to ensure diversity and educational equity, and to reduce the disparate impact of educational practices.

7. Accordingly, in or around May 1997, Plaintiffs, both the original OCR complainants and additional class representatives of African-American students, represented by counsel from Futterman & Howard, notified Unit 4 that they were contemplating the commencement of class action litigation against the District challenging, among other things, the student assignment methods used from 1968 to 1997 and those provided in the Redistricting Plan.

8. On September 16, 1997, Unit 4 and Plaintiffs entered into an agreement memorialized in the Champaign Controlled Choice Plan Memorandum of Understanding ("Controlled Choice Memorandum"), which

established a comprehensive plan that enables parents, within certain parameters, to choose the schools their children will attend. The Controlled Choice Memorandum is hereby incorporated as part of this Consent Decree and is attached hereto as Exhibit A.

9. In June 1998, OCR and Unit 4 entered into a Resolution Agreement ("OCR Resolution Agreement") as to the actions appropriate for resolving issues covered in the agency's review. The OCR Resolution Agreement is hereby incorporated as part of this Consent Decree and is attached hereto as Exhibit B. The OCR Resolution Agreement includes findings of fact by OCR that established statistical disparities between majority and minority students in the areas of gifted, upper level courses, within-school integration, discipline, and special education. The Board neither admits nor denies OCR's factual findings.

10. In conjunction with the OCR Resolution, the parties agreed that more detailed comprehensive analysis was needed to establish the necessary factual predicates required to remedy equity disparities. Accordingly, the District retained an educational equity consultant, Dr. Robert Peterkin, to perform a comprehensive equity audit ("Audit"). The Audit is hereto attached as Exhibit C.

11. On July 6, 1998, Unit 4 and Plaintiffs entered into further agreement, memorialized in the Memorandum of Understanding

of Civil Rights Issues Relating to Education Equity ("Education Equity Memorandum"), which established a comprehensive plan and program for addressing certain additional complaints of Plaintiffs regarding the alleged inequitable treatment of African-American students in Unit 4 schools and programs. The Education Equity Memorandum is hereby incorporated as part of this Consent Decree and is hereto attached as Exhibit D.

12. The Education Equity Memorandum specifically required the parties to develop a clear process and a detailed and effective plan ("Implementation Plan") to achieve educational equity for African-American students. *See* Education Equity Memorandum (Exhibit D), Paragraphs 2B and 5A-H. The Implementation Plan was approved by the Board on June 12, 2000. It will be continually monitored and may be modified in the future as appropriate. The Implementation Plan is hereto attached as Exhibit E.

13. The parties chose to address Plaintiffs' allegations regarding educational inequities cooperatively because there were substantial advantages to both Unit 4 and the Plaintiff class in terms of the speed and potential effectiveness of the remedies and because there was a significant and valuable possibility that there would be greater community support for the equity efforts, which in turn would contribute to the effectiveness of the remedial efforts.

14. As a part of the Controlled Choice and Education Equity

Memoranda, the parties agreed that in the event that objections or challenges were raised by a third party regarding the lawfulness or appropriateness of the Memoranda or the implementation of the Memoranda, the District and the Plaintiff class, as represented by Futterman & Howard, would jointly defend the lawfulness and appropriateness of the matter challenged.

15. On July 28, 2000, such a third party challenge was made. *See RJN v. Board of Education of Champaign,* Case No. 00-2022, filed in the Central District, Urbana Division and reassigned to the Peoria Division with a new Case No., 00-1284.

16. Accordingly on October 4, 2000, Plaintiffs, as representatives of the class of present and future African-American students in Unit 4, filed their Complaint against the Board of Education of Unit 4. The Complaint alleges that Unit 4's educational practices violate the Fourteenth Amendment of the United States Constitution, Title VI of the Civil Rights Act of 1964, 34 C.F.R. § 100.3 *et seq.*, 42 U.S.C. § 1981, and the Equal Protection Clause of the Illinois Constitution. Plaintiffs believe that if their Complaint was litigated, there is a substantial likelihood that they would succeed in the merits of their claims.

17. On December 18, 2000, this Court consolidated this case with RJN v. Board of Education.

18. On December 28, 2000, Racial Justice Now ("RJN") filed a

motion to intervene into this case. This Court denied the motion to intervene on August 16, 2001.

19. On February 8, 2001, Unit 4 filed its Answer to the Complaint in this case.

20. On August 22, 2001, this Court granted class certification to the Johnson plaintiffs, appointed Futterman & Howard class counsel, and vacated its December 18 order consolidating the RJN and Johnson cases.

21. The parties agree that there are alternative student assignment and educational practices, reflected in the Controlled Choice Memorandum, Education Equity Memorandum and Implementation Plan, which are of at least comparable soundness and which would not have the disparate impact caused by the practices used by Unit 4 from 1968 to 1997 . The parties agree that adoption of these alternatives will benefit all students.

22. The Board believes that litigation of these issues would require a substantial expenditure of public funds and a substantial commitment of Board and staff resources at a time when financial and personnel resources are already greatly limited, and that such resources can more appropriately be used to achieve the educational goals of the school system. The parties further believe that litigation in this matter would be protracted and that settlement of the action is in the public interest.

23. In light of these considerations, the parties, as indicated by the signatures of their counsel on the Joint Motion for Preliminary Approval of the Revised Proposed Consent Decree, have determined to settle this action and resolve Plaintiffs' request for injunctive and declaratory relief by entry of this Consent Decree. The parties submit to the jurisdiction of this Court and acknowledge that subject matter jurisdiction exists over this action under the Fourteenth Amendment of the United States Constitution and under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. The parties further acknowledge this Court's pendant jurisdiction over Plaintiffs' claims under the Equal Protection Clause of the Illinois Constitution, Ill. Const. Art. I, Sec. 2. In light of the claims in this case and the scope of remedies which this Court would be authorized by law to enter if there were a finding of a liability on those claims, the parties concur that all of the provisions of this Order are within the scope of such remedies and, therefore, are consistent with the Constitution and laws of the United States.

24. The parties agree that this Consent Decree is final and binding as to the issues resolved herein. The Court shall retain jurisdiction over this action for the purpose of enforcing the dispute resolution procedure set forth in Section IV of the Consent Decree entitled "Resolution of Disagreements." If any provisions

are found by a court to be outside the scope of constitutional or statutory remedies, it is the express intention of the parties that such provisions are severable from all other provisions. Finally, considering the judicial resources that might be conserved by resolving in this fashion the issues addressed herein, the parties believe that this Order represents an appropriate commitment of the Court's resources.

25. In the event that any other objections or challenges are raised by third parties (e.g., through intervention or separate collateral lawsuits) to the lawfulness or appropriateness of this Consent Decree, any provision hereof, or proceedings pursuant hereto, or that attempts are made to separately litigate these issues, the parties shall jointly defend the lawfulness and appropriateness of the matter challenged. Unit 4's counsel will take the lead role in doing so. If any such collateral lawsuit arises in state court, the parties shall seek to remove such action to the U.S. District Court.

The parties having freely given their consent to the terms of this Consent Decree and in accordance with the findings of fact and conclusions of law contained in the Order entered concurrently herewith, it is ordered:

I. CONTROLLED CHOICE PLAN

In accordance with the Controlled Choice Memorandum (*see*

Exhibit A hereto attached), Unit 4 will continue to implement the requirements of the Controlled Choice Memorandum, unless subsequently amended by agreement of the parties. The parties agree that Controlled Choice at the middle and high school levels will not be instituted unless Plaintiffs demonstrate by March 15, 2002[1], after consultation with Dr. Alves, that Controlled Choice is necessary to fulfill the objectives of the Consent Decree. The Controlled Choice Plan for the elementary school level shall continue to include all the enumerated elements set forth in the Controlled Choice Memorandum, unless otherwise agreed, including, without limitation, the following elements:

A. Parent Information Centers

1. Establish, maintain and administer a Parent Information Center as further described in the Controlled Choice Memorandum.

B. Application and Assignment

1. Administer the application and assignment process for its schools in a manner consistent with the Controlled Choice Memorandum, including, without limitation, those procedures set forth in the

[1] In the event that Dr. Alves' report on secondary school choice is not completed by January 15, 2002, Plaintiffs must demonstrate the need for secondary school choice within 60 days from the date of Dr. Alves' report.

Controlled Choice Memorandum for student selection at over-enrolled schools.

C. Magnet Schools

1. Establish and maintain a program of magnet schools, and shall provide for interest-based application to and heterogenous attendance at such schools as provided in the Controlled Choice Memorandum.

D. Seat Capacity

Unit 4 will complete the following steps to increase seat capacity and enhance student assignment desegregation:

1. Consistent with Paragraph G(4) below, open and enroll the fourth strand of classes at Stratton Elementary School by the start of the 2003-2004 school year.

2. Secure funding and complete the renovation of the old Sunbeam Bakery by the end of the 2002-2003 school year, contingent on receipt of Qualified Zone Academy Bonds from the Illinois State Board of Education, and relocate the pre-school program currently located at Marquette School to the renovated Sunbeam Bakery building.

3. By the start of the 2005-2006 school year, provide additional net seating capacity of not less than

two elementary strands in north Champaign as part of a comprehensive facilities plan for the entire District. Unit 4 will make every good faith effort to find and obtain necessary funding as a condition of this commitment.

4. In making all decisions regarding the establishment or closing of schools, consider the impact on African American students, and to further desegregation and to avoid inequitable transportation burdens on African American students, consider all reasonable alternatives to enhance desegregation efforts that do not result in a segregated system or segregated schools.

E. Community Involvement

1. Consult with and solicit the participation of members of the community in the implementation of the Controlled Choice Plan, including the Controlled Choice Community Task Force established pursuant to the Controlled Choice Memorandum.

F. Other Activities

1. Carry out those additional activities as set forth in the Controlled Choice Memorandum as shall be necessary to effectuate the Controlled Choice Plan,

including without limitation the provision of appropriate transportation services, implementation of school reform activities for the support of both over-chosen and under-chosen schools, and continued provision of special services and funding for eligible students under State and Federal law.

G. Plan for Stratton Elementary School

Given the historical circumstances faced by Stratton Elementary School, which are detailed in the Findings of Fact supporting this Decree, Stratton shall be designated as a special desegregation school. A five-year plan for Stratton will be developed and will include, but is not limited to, the following elements:

1. The District will provide educational input programs, requiring additional resources and funds, that will endeavor to accelerate student learning and increase parental involvement and advocacy, including maintaining an average student/teacher ratio not to exceed 20 to 1.

2. Stratton will be closely monitored by a special Building Council of administrators, parents, staff, and community members who will provide input to the principal regarding improvement of student

achievement, including recommendations regarding programs, services, and staff. The Superintendent and Assistant Superintendent, Equity and Education, will work with Plaintiffs' and Defendant's counsel as necessary to monitor these issues.

3. Unit 4 will launch a recruitment campaign for Stratton focusing on increasing racial and socio-economic diversity of the student body.

4. Stratton, while not exempt from racial fairness guidelines, will have a five year time frame to attain racial fairness guidelines, and is expected to make incremental progress during that time.

II. EDUCATIONAL EQUITY PLAN

Unit 4 will carry out the requirements of the Educational Equity Memorandum (*see* Exhibit D hereto attached), unless subsequently amended by agreement of the parties. In accordance with said Memorandum, Unit 4 will carry out the Implementation Plan (*see* Exhibit E hereto attached) which was prepared, in part, based on the comprehensive Audit conducted in June 1998 with the assistance of external consultants to evaluate the performance of Unit 4 schools (*see* Exhibit C hereto attached). The Implementation Plan is to address those issues identified in the Educational Equity Memorandum in accordance with the following goals:

A. Climate and Discipline

1. Seek to provide educational tools and alternative resources that eliminate unwarranted disparities in student discipline and attendance at alternative schools.

2. Seek to use student discipline as an intervention strategy only and as a means to improve student performance and academic behavior.

B. Special and Gifted Education Programs

1. Seek to eliminate, to the greatest extent practicable, unwarranted disparities in the assignment of minority students to special education and gifted programs, and to operate such programs in an educationally sound and non-discriminatory manner.

C. Student Performance

1. Seek to eliminate unwanted disparities in the enrollment of minority students in upper level courses.

2. Implement innovative, interactive, research-based curriculum and instructional practices that take into account students' diverse learning styles and provide training to teachers in such practices.

D. Hiring and Staff Placement and Retention

1. Seek to achieve a substantial level of racial diversity of certified and classified staff District-wide and at each school level in order to facilitate educational equity.

III. TIMETABLE

The Controlled Choice Plan and the Educational Equity Plan will be developed and implemented in accordance with the schedules set forth in the Controlled Choice Memorandum and the Educational Equity Memorandum, respectively. Currently, the initiatives are in their fourth year of an eleven-year implementation schedule, which will expire at the end of the 2008-2009 school year. The District's obligations under this Decree likewise will expire at that time.

IV. MONITORING AND ENFORCEMENT

A. Monitor

Dr. Robert Peterkin was originally retained by Unit 4 to review equity issues and co-authored the Equity Audit (attached as Exhibit C). In accordance with Federal Rule of Civil Procedure 53, the inherent equitable powers of this Court, and the provisions of this Order of reference, Dr. Peterkin is hereby ordered to serve as monitor in this case. The Court-appointed monitor will provide valuable information and expertise to the Court regarding

implementation of the Decree.

The monitor will work cooperatively with Unit 4 and the Plaintiffs in order to assure full implementation of the components of the Decree with adherence to the timetables and goals therein. The monitor will submit annual written progress reports, including any recommendations, to the Court, the District and the Plaintiffs' counsel on approximately the first day of August of each year, beginning August 2002. To facilitate timely submission of reports to the Court, the monitor may collaborate with data specialist James Lucey and student assignment expert Dr. Michael Alves. If either James Lucey or Michael Alves becomes unavailable, the parties will agree on another individual. These reports will include data and documentation of the elements of the Controlled Choice Memorandum, Education Equity Memorandum and Implementation Plan, consistent with the requirements of the status reports to be submitted to the United States Department of Education, Office of Civil Rights ("OCR") as part of the OCR Resolution Agreement (attached as Exhibit B) and to the Planning and Implementation Committee as part of the Controlled Choice and Education Equity Memoranda. The monitor will compile data on a semester basis, beginning with data for the Spring 2002 semester. As appropriate, the monitor may make recommendations to Unit 4 each semester. If Dr. Peterkin becomes unavailable to serve as the monitor, the

parties will agree on another individual, and submit his or her name to the Court for approval.

B. Mediator

Although this Court retains jurisdiction to inquire into and compel the implementation of the Consent Decree as it deems necessary, the monitor's role will also include mediating any disputes between the parties regarding any component of the Decree. The purpose of this mediation process is to promote cooperation between the parties, encourage voluntary compliance by the District, and limit unnecessary expenditures of this Court's time and resources. In order to initiate the mediation process, disagreements regarding any component of the Controlled Choice Plan and the Educational Equity Plans, must be submitted in writing by either party to this Decree to Dr. Peterkin, who will have one month to issue a decision.

C. Arbitrator

If the parties are unable to resolve the issue with the assistance of the monitor, the issue shall be resolved by binding arbitration before an arbitrator, as provided in the Controlled Choice and Educational Equity Memoranda (*see* Exhibits A and D hereto attached), except the parties agree that there will not be a permanent arbitrator. The arbitrator for any given issue(s) will be mutually agreed upon by Plaintiffs and Unit 4. In the event the

parties are unable to agree on an arbitrator for any give issue(s), each party will choose an arbitrator and these individuals will choose a third person who will serve as the arbitrator. Any arbitration award rendered under the Decree shall be enforceable by this Court.

V. CHANGES TO THE CONSENT DECREE

If extenuating circumstances arise regarding any component of this Consent Decree, the parties, with the assistance of the monitor, may jointly propose appropriate changes in writing to the Court.

VI. FUNDING

Consistent with Paragraphs 17 and 7 of the Controlled Choice and Educational Equity Memoranda, respectively, the District has agreed to provide sufficient resources for the implementation of this Consent Decree.

ENTERED this 29th day of January, 2002.

Joe B McDade

JOE BILLY McDADE
Chief United States District Judge